

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant(s): David C. PAUL *et al.*

Attorney Docket No.: GMI.0009.US

Application No.: To Be Assigned

Group Art Unit: To Be Assigned

Filed: January 23, 2004

Examiner: To Be Assigned

For: SPINE STABILIZATION SYSTEM

**PETITION TO MAKE SPECIAL  
UNDER MPEP § 708.02**

Assistant Commissioner for Patents  
Washington, D.C. 20231

Sir:

Applicants hereby petition the Commissioner of Patents and Trademarks to make this application special under the special examining procedure for accelerated examination recited in M.P.E.P. § 708.02. In accordance with M.P.E.P. § 708.02, Applicants have provided herewith a check that includes payment of the \$ 130.00 fee for this Petition as set forth in 37 C.F.R. § 1.17(h).

All claims presented herein for examination are directed to a single invention. However, if it is determined that restriction is required, Applicants agree to make an election in accordance with established telephone restriction practices upon notification of the requirement for restriction.

Also in accordance with M.P.E.P. § 708.02, Applicants affirm that a pre-examination search has been conducted to identify the existence of prior art related to the subject matter of the present invention. The classes and subclasses searched include the following:

<u>Classes</u>	<u>Subclasses</u>
606	61, 63, 69, 70, 71, 72, 73, and 103
623	17.11, 17.13, 17.15, 17.16, 20.26, 20.27, and 23.32

The most pertinent references uncovered during the aforementioned search are described below, and copies are provided to the Examiner as required by MPEP § 708.02. Many additional references were also uncovered, but not deemed to be as pertinent. All references found from searching the classes and subclasses listed above are identified in the IDS and PTO Form 1449 submitted herewith.

## **DETAILED REMARKS**

### ***Brief Description of the Claimed Invention***

The present application discloses and claims a flexible spine stabilization system that comprises a rod having one or more flexible elements integrally formed in the rod. As recited in claim 1, the only pending independent claim, a slit formed in the rod helps provide the desired flexibility of the flexible element.

One advantage of the present invention is that its configuration permits it to be used with or as a substitute for other spinal stabilization equipment, such as rigid rods that are conventionally used to fully immobilize a spine. Additional novel features of the present invention are also found or described in the dependent claims. For instance, many of the claims are directed to the ability of the flexible element to have different ranges of motion in different directions, such as flexion/extension, lateral bending, rotation, or axial compression. Other features of the invention described in the claims are directed toward the various aspects about the slit formed in the rod. None of the references discussed below teaches or suggests these features.

Another advantage of the present invention is its ability to mimic or approximate the range of motion of a healthy motion segment unit. Many of the embodiments described throughout the specification further explain that the invention may also be used to restrict or limit range of motion. The ability to custom tailor different ranges of motion for different directions of motion is not found in the references discussed below.

### ***Discussion of the Pertinent References***

U.S. Patent No. 6,652,585 to Lange appears to disclose a spine stabilization system having a flexible member attachable to a portion of the spinal column. According to the '585 patent, the flexible members resist loading of the spine by extension and rotation. Lange '585

does not appear to teach or suggest integrally forming a flexible element in a rod as described above and as recited in claim 1.

U.S. Patent No. 6,616,669 to Ogilve *et al.* appears to disclose a fusionless method of treating spinal deformities by attaching a tether to vertebral bodies on the convex side of the spine. Once again, Ogilve appears to be completely silent with regard to integrally forming a flexible element in a rod. Because there is no discussion of this feature, there also is no mention of a slit formed in a rod as presently claimed.

U.S. Patent No. 6,551,320 to Lieberman appears to disclose another system for correcting spinal deformities by using a tether that is separate and distinct from other components of the system. In this case, the tether is a cable that may be tensioned to cause relative movement between the vertebral bodies.

U.S. Patent No. 6,293,949 to Justis *et al.* appears to disclose a spinal stabilization system that uses shape memory metal having pseudoelastic characteristics at about human body temperature. Justis does not appear to teach or suggest integrally forming a flexible element in a rod with a slit as presently claimed.

### CONCLUSION

In view of the foregoing, Applicants respectfully submit that the requirements of MPEP § 708.02 have been met. In addition, the pending claims are all allowable over the references described above when considered either individually or in any reasonable combination. Accordingly, Applicants request that this Petition to Make Special be granted and proceed for expedited prosecution on the merits and allowance.

Respectfully submitted,

Dated: January 23, 2004

By: \_\_\_\_\_



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